

**Webster Zoning Board of Appeals  
Meeting Minutes – September 29, 2021**

A meeting of the Webster Zoning Board of Appeals was held on September 29, 2021 in the Board of Selectmen Meeting Room of Webster Town Hall, 350 Main Street, Webster, MA.

**Present:** Chairman Jason Piader, Vice Chairman Dan Cournoyer, Clerk Chris Daggett, and Members Mark Mason and Dan Fales.

**Also Present:** Ann Morgan, Director of Planning & Economic Development

**1. Call to Order:** Chairman Piader called the meeting to order at 6:01 p.m.

**2. Action Items**

- a. Approval of Meeting Minutes of September 7, 2021 and September 21, 2021 - tabled.
- b. Meeting Schedule – Currently, the Board meets as required. Ms. Morgan drafted a proposed meeting schedule in order to provide submission guidance to applicants. The dates are subject to change if necessary to accommodate the Board. Motion to approve the meeting schedule made by Mr. Cournoyer, seconded by Mr. Fales. There was no discussion from the Board. Motion passed unanimously 5-0 by roll call vote: (Mr. Mason – AYE; Mr. Cournoyer – AYE; Mr. Daggett – AYE; Mr. Fales – AYE; Mr. Piader – AYE)
- c. Town Meeting Warrant Article 7 – At the last meeting, the Board voted to provide support to Fall Town Meeting Warrant articles including Article 7 which pertains to determining the front yard setback lines in the Lake Residential (LR) District. Since the Board vote, the Selectmen held a public hearing on the matter and raised concerns about some of the proposed changes such as the definition of structure and how to determine front lot line. The Planning Board recommended passing over the item based on that input and advice of Town Counsel who suggested that the best first course of action would be to adopting a definition section to provide clarity. Motion to rescind the Boards previous vote of September 21, 2021 to support the passage of Article 7 at Town Meeting and recommend the article be passed over made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: (Mr. Mason – AYE; Mr. Cournoyer – AYE; Mr. Daggett – AYE; Mr. Fales – AYE; Mr. Piader – AYE)

**3. Public Hearing**

- a. Appeal of Enforcement Orders Issued by the Building Commissioner / Zoning Enforcement Officer regarding the fence and restoration area at 32 Point Pleasant Road; Assessor ID 48-A-46-0; Debra L. Coonan (Applicant / Owner). Said site is located in the Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.

Clerk Daggett read the public hearing notice and Chairman Piader opened the public hearing. The Applicant, Ms. Debra Coonan, was present in the audience and was represented by her attorney, Mr. Henry Lane. Ms. Morgan presented the staff report and the GIS map of the site on the screen for all to see. She advised that the GIS map is for reference only and does not accurately define property lines. The aerial photo shown was from 2019. Ms. Coonan has filed an appeal to the Building Commissioner's enforcement order, which states that the fence on her property should be removed because it is on filled in land.

Ms. Morgan read the facts and staff findings. The property is fully fenced in and only one portion of the property is under consideration for enforcement. A section in the rear had been filled a number of

years ago prior to the Applicant's purchase of the property. No formal survey has been done, and adverse possession cannot be determined from the property record cards or documents filed at the Worcester District Registry of Deeds. The fence in question is not on Town-owned property and the filling of the Lake is a matter for the State resolve. The Town's by-laws do not regulate fencing as it relates to adverse possession as this would be a civil matter between property owners. There are no provisions under M.G.L. section 40A addressing this issue.

Mr. Piader questioned whether the Board has jurisdiction in this matter. Ms. Morgan consulted with the Building Commissioner and visited the site. The Building Commissioner notes that land below the 480 water mark is owned by the State. Mr. Piader asked if the fence was installed with a building permit. Ms. Morgan stated that there were no permits pulled for the fence which was installed about 20 years ago. She further noted that the Zoning By-law is clear that the Board only has jurisdiction over matters pertaining to zoning and that the issue at hand is does not pertain to zoning.

Mr. Lane, representing the Applicant, stated that he and Ms. Coonan agree with the staff analysis as to the validity of the application noting that this is not a zoning matter. Ms. Coonan purchased the home in 1998 and at the time there was no permitting requirement for a fence of this height. It is now a previously non-conforming structure. The statute of limitations to object to the installation of the fence expired 13 years ago. There are numerous grandfathered retaining walls and docks on Webster Lake. The State has declared that any constructed before 1984 are considered grandfathered. Mr. Lane stated that there is no zoning violation that able to be enforced by the Board.

Mr. Piader opened the floor for public comments and questions. John Biske, 61 Point Pleasant Road, stated that there was a survey done in 1998, which was recorded at the Worcester District Registry of Deeds. The deed showed the easement on the property. He submitted a copy of the survey to the Board as testimony.

Karen Bartholomew, 30 Point Pleasant Road, stated that the she agreed that zoning is not the issue. However, no one can take ownership of filled in land. Any fill is owned by the Commonwealth of Massachusetts and that Ms. Coonan does not own the filled in area and does not pay taxes on it. Mr. Piader advised that the issue of the filled land should be dealt with at Superior Court or Land Court. Ms. Bartholomew stated that the Town Fence Viewer, the Building Commissioner, has the right to determine where the fence is placed. The Building Commissioner said the fence should be removed because Ms. Coonan does not own the land.

Melanie Amir, 24 Point Pleasant Road, stated that the retaining wall has been there as long as she can recall. They also have filled in land at their property, as do many other properties on Webster Lake. Mr. Piader stated that this is a complex easement issue. Ms. Morgan clarified that there are drainage and sewer easements across Ms. Bartholomew's property at 30 Point Pleasant Road.

Mr. Biske submitted a copy of the deed, recorded at the Worcester District Registry of Deeds that includes a right of way for swimming across 30 Point Pleasant Road.

Ms. Bartholomew noted that the issue is not the easement. She stated that she serves as an alternate member on the Webster Conservation Commission and believes that there is an issue with the public claiming filled in land. The Town of Webster has the authority to decide the placement and limit of a fence. There were no further comments from Mr. Lane or from Ms. Coonan.

Charles Tebo, 34 Point Pleasant Road, stated that his house came with fill, and that Ms. Coonan's fence has been there for over 20 years. He questioned why this issue is brought up now. Ms. Bartholomew answered that when she bought her property and was laying out the property line according to the deed, she has waterfront property and that the fence in question is blocking her access to the water.

Mr. Piader stated that this is a complex easement issue that should be adjudicated in another forum, and that the discussion of easement is irrelevant to the Board's decision. There were no further questions or comments from the Board or the public.

Motion to close the public hearing and direct staff to draft a decision made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously, 5-0 by roll call vote: (Mr. Mason – AYE; Mr. Cournoyer – AYE; Mr. Daggett – AYE; Mr. Fales – AYE; Mr. Piader – AYE).

4. **Next Meeting Date:** The Board agreed to meet next on Tuesday, November 2, 2021 at 6:00 p.m. at Webster Town Hall.

5. **Adjournment**

Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote: Mr. Daggett - yes; Mr. Cournoyer –yes; Mr. Mason - yes; Mr. Fales - yes; Mr. Piader - yes). The meeting was adjourned at 6:44 p.m.

  
Chris Daggett, Clerk

11/3/21  
Date

**EXHIBITS**

Appeal of Enforcement Orders Issued by the Building Commissioner / Zoning Enforcement Officer regarding the fence and restoration area at 32 Point Pleasant Road:

- Certified Abutters List; dated September 7, 2021 and received September 9, 2021; 4 pages.
- Correspondence; Violation Letter from The Inspector of Buildings; dated August 12, 2021 and received September 9, 2021; 1 page.
- Form; Variance Application; dated September 7, 2021 and received September 9, 2021; 6 pages.
- Correspondence; Final Notice Letter from The Inspector of Buildings; dated August 30, 2021 and received September 9, 2021; 1 page.
- Town of Webster Zoning Board of Appeals Public Hearing Notice; stamped by Town Clerk on September 13, 2021; 1 page.
- Correspondence; Comments submitted by Karen Bartholomew, 30 Point Pleasant Road; dated and received September 28, 2021; 1 page.
- Correspondence; Comments submitted by Karen Bartholomew, 30 Point Pleasant Road; dated and received September 29, 2021; 2 pages.

- Correspondence; Memorandum from Ann Morgan, Director of Planning and Economic Development and Ted Tetreault, Building Commissioner and Zoning Enforcement Officer; Appeal Application – 32 Point Pleasant Road; dated September 29, 2021; 6 pages.